



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 24, 2022

IN THE MATTER OF:

Appeal Board No. 623271

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 623271, 623272 and 623273, the claimant appeals from the decisions of the Administrative Law Judge filed April 27, 2022, which sustained the initial determinations disqualifying the claimant from receiving benefits, effective June 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$5476.80 in benefits recoverable pursuant to Labor Law § 597

(4) and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$3000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$1271.52 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by and on behalf of the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant, who is not a native English speaker, worked as a part time bartender for a country club for four weeks. When he was hired, he was told that if he wanted extra hours, he could be sent to work in the dining room as a waiter. During the week of June 7th, the claimant spent two days training and worked one day. During the week of June 13th, he worked four

days. During the week of June 20th, he was scheduled for three days. When he looked at the schedule for July 4th, he noticed that he was scheduled for June 28th and June 29th. June 29th had been "X" off, as had June 30th. The claimant was upset, and he told a coworker, MO, that it was not fair and that he was mad. He did not tell her that he quit. She told him to talk to the vice president, PD. The claimant went to PD's office and complained that he wasn't getting any hours. He never told her that he quit. PD told him that she wasn't responsible for scheduling, and he understood her to say, that the manager, AB, would call him about the schedule. The claimant returned to the bar and finished his double shift.

When AB, the manager, returned to work on June 29th, MO told him that the claimant said he quit and wasn't coming back. Though she wasn't scheduled to work, she reported to take the claimant's shift. In passing, PD spoke to AB and told him that the claimant was upset with the reduction in his hours. She did not tell AB that the claimant quit. AB never contacted the claimant regarding the scheduling or his continuing to work for the employer. The claimant contacted PD later that week for his final check, stating that he had to search for another job. She never advised the claimant that continuing work was available for him with this employer.

When the claimant certified for benefits on July 11, 2021, he informed the Department that the break in his claim was due to being discharged.

The claimant received the benefits at issue.

OPINION: The credible evidence establishes that the claimant's last day of work was June 28, 2021. Though the claimant was unhappy with his hours being cut, we do not credit that the claimant quit on that date. We note that after he spoke to the vice president, PD, about the cut in his hours, he did not advise her, a senior member of management, that he quit nor did he walk off the job. Rather, the claimant returned to the bar and completed a second shift.

We note that the claimant's supervisor, the manager AB, never spoke to the claimant directly and the claimant never told AB that he quit. AB relied on a hearsay statement by the claimant's co-worker, who took over the claimant's shift on June 29th. We note that the claimant's schedule was X out for both June 29th and 30th and that AB had no explanation for how that happened. As for the claimant's failure to contact AB about his schedule, the claimant understood PD to have told him that that he would be contacted by the manager.

The claimant had no intention to quit his job, he wanted only to have his hours increased. We therefore conclude that the claimant is not disqualified due to a voluntary quit without good cause.

As the claimant was entitled to receive benefits, the benefits he received were not an overpayment.

The claimant was expecting a call from his manager to discuss the cut in his hours. When that call did not happen, the claimant believed that he was being discharged. When he contacted PD for his final paycheck, she never advised him that the employer believed he quit or that there was continuing work for him. The claimant's indication, on his certification that the break in his claim was due to a discharge, was reasonable and does not rise to being a willful false statement. There is no penalty of future benefit days or a monetary penalty.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 623271, 623272 and 623273, the initial determinations disqualifying the claimant from receiving benefits, effective June 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$5476.80 in benefits recoverable pursuant to Labor Law § 597 (4) and charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$3000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$1271.52 on the basis that the claimant made willful misrepresentations to obtain benefits are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER